

HUMAN SERVICES BOARD

INTRODUCTION

Fair Hearing No. V-08/08-368 deals with the 2008-2009 service year. Petitioner disputes the decision by DAIL to award petitioner 121 hours/two weeks; these hours were to be divided between the home health agency (17 hours/two weeks) and petitioner-directed care (104 hours/two weeks). The parties agree that the dispute as to the amount of services is moot as petitioner's needs were reassessed and a new service year started. However, the issues regarding how to

treat the services provided by the local home health agency remain.

Fair Hearing No. V-05/09-257 deals with the 2009-2010 service year. Petitioner disputes the decision by DAIL to award petitioner 121 hours/two weeks through the consumer directed CFC program rather than 148 hours/two weeks.

Petitioner wanted DAIL to add the hours the home health PCA worked; DAIL argued that the home health PCA services were incorporated in the CFC service plan in order to meet the two-person requirement for certain ADLs.

The decision is based upon the testimony, exhibits and briefing of the parties. Testimony was taken from (1) M.K., the long-term care clinical coordinator (LTCCC) from DAIL, (2) K.D., the long-term care coordinator and assistant executive director of the local home health agency, (3) N.M., DAIL Medicaid waiver supervisor, (4) Dr. D.R., petitioner's primary care physician, (5) petitioner, (6) B.H., petitioner's CFC case manager from the area agency on aging, and (7) petitioner's mother.

Exhibits admitted at hearing include:

1. January 23, 2009 Independent Living Assessment (ILA)
2. January 23, 2009 Variance request
3. Home-Based Service Plan for 4/19/2009-4/18/2010
4. Personal Care Worksheet dated 1/23/09 and annotated by M.K.

5. April 14, 2009 Notice of Decision
6. March 27, 2008 ILA
7. March 27, 2008 Variance Request
8. Home-Based Service Plan for 6/1/2008-5/31/2009
9. Personal Care Worksheet dated 3/27/2008 and annotated by M.K.
10. May 9, 2008 Notice of Decision
11. July 31, 2008 Commissioner's Review

FINDINGS OF FACT

1. The petitioner is a twenty-seven-year-old woman who was severely injured in a car accident during 2001.

Petitioner is a quadriplegic who is in chronic pain. Her injuries are at C5-7 and C1-5. Dr. D.R. characterized her spinal cord as stretched meaning that petitioner's recovery is unpredictable. The petitioner is an energetic and highly motivated patient. Due to the extent of her injuries, petitioner has received services from the CFC program since its inception. Petitioner is considered highest needs.

2. The petitioner lives with her parents. Her mother provides personal care services for petitioner and is paid through the CFC program. Petitioner wants her mother to be adequately compensated for her work. During the time in question, petitioner was directing her CFC hours to her mother.

3. The petitioner's condition and functional needs have remained constant over the past two years. Petitioner

needs two-person assistance for the majority of her Activities of Daily Living (ADLs). Petitioner has been granted variances for dressing, bathing, bed mobility and transferring because her service needs are greater than the maximum times provided for her level of severity.

4. The petitioner also receives services through the local home health agency. These services need to be considered during the determination of the amount of services DAIL should fund through the CFC program. One goal is to avoid duplication of services.

5. During the 2007-2008 service year, petitioner received 118 hours/two weeks through the CFC program in addition to services from the home health agency.¹

6. The home health agency through the course of this appeal has provided services Monday through Friday mornings including (1) petitioner's bowel program on Monday, Wednesday and Friday (enemas and manual stimulation), (2) bathing including transfers to the shower on Monday, Wednesday and Friday and bed baths on Tuesday and Thursday, and (3) personal hygiene including oral hygiene, shampoos, shaving legs and armpits, and applying multiple lotions for skin

¹Prior to this time, petitioner's CFC hours fluctuated up and down depending on her needs. Also, at times, petitioner's CFC hours were split between the home health agency and PCAs designated by petitioner.

protection. Home health services are provided three hours/day on Monday, Wednesday and Friday and 1.5 hours/day on Tuesday and Thursday. The home health agency also provides physical therapy for petitioner.

The home health agency sends both a LNA and PCA. Medicare funds the services provided by the LNA.² The home health PCA cannot be paid through Medicare and is paid by the home health agency. The home health agency does not want to continue paying this PCA but they have continued these services through these appeals.

7. For the 2008-2009 service year, petitioner requested 124 hours/two weeks from DAIL. Petitioner started pool therapy one day per week necessitating additional time for her CFC services. Petitioner also received 24 hours PCA services/two weeks through the home health agency.

8. DAIL issued a decision awarding petitioner 121 hours/two weeks for the 2008-2009 service year based on additional time needed for petitioner's pool therapy. In addition, DAIL decided that 17 hours/two weeks should be paid directly to the home health agency to cover the PCA services provided through the home health agency because DAIL

² Medicare funds skilled care.

considered the home agency PCA a duplication of services. Petitioner wanted all 121 hours/two weeks to be paid to her mother.

During the first appeal, CFC payment was not made directly to the home health agency and the issue of doing so is moot.

9. During the fall of 2008, a team meeting was held with N.M., K.D., M.K., and B.H. The outcome of the meeting was that the home health agency would continue to provide LNA services and stop funding PCA services.

10. As a result of this team meeting, petitioner's needs were reassessed for the CFC program. The reassessment became the basis for the 2009-2010 service year. Petitioner requested 148 hours/two weeks saying that the additional time was necessary to incorporate the time being lost by no longer having a PCA through the home health agency. DAIL made a decision to continue funding 121 hours/two weeks for petitioner through the consumer directed program. DAIL based its consideration, in part, on their belief that petitioner was not following through on the requirements to pay two PCAs when a particular ADL called for two person assistance and that the use of the home health agency PCA had been a duplication of CFC funded services.

11. M.K. testified that it was brought to her attention as part of the 2009-2010 service year that home health PCA services would end and that petitioner wanted the time that home health funded incorporated into her CFC services. M.K. did not believe that the petitioner's 2008-2009 ILA included consideration of the home health services in her requests for services.

12. There are differences in the time awards for particular activities between the two service years. A chart is attached as Exhibit A showing petitioner's requests and DAIL's determinations.

13. B.H. prepared the requests on petitioner's behalf for both service years.

ORDER

DAIL's decision is affirmed.

REASONS

The Choices for Care (CFC) program is a Medicaid waiver program that allows individuals who need nursing home level of care the means to choose whether to remain in their own home, a community setting, or enter a nursing home.

The general policy of the CFC program "shall be based on person-centered planning, and shall be designed to ensure

quality and to protect the health and welfare of the individuals receiving services.” CFC 1115 Long-term Care Medicaid Waiver Regulations (CFC Regulations) Section I.A. As a result, each individual’s case turns on information specific to the individual.

Once an individual is eligible, the individual is reassessed on a regular basis. CFC Regulations § VII.B.

The ILA lists maximum time limits for each ADL depending on the level of need. Recognizing that the program maximums may not meet an individual’s needs, the regulations set out guidelines for requesting a variance. CFC Regulations § XI. DAIL has granted petitioner variances for several ADLs.

If DAIL’s decision includes a reduction in the amount of time from the prior year for a particular ADL, DAIL bears the burden of proof in justifying the reduction of services. If DAIL has denied a new request for time above the prior year for a particular ADL, the burden is on the petitioner to demonstrate the necessity for that request.

Part of the problem in this case includes whether the petitioner’s request for particular ADLs factored in the services received from other agencies. Petitioner argues that the prior CFC requests and allocations factored in the home health agency services so that any decrease in the home

health agency services without adding these services to the CFC case plan acts as a decrease in services.

The consolidated case of Fair Hearing Nos. 20,148 & 20,676 is instructive. In that case, the LTCCC assumed that the case manager did not factor in the LNA services provided petitioner and reduced CFC services. However, the case manager's testimony contradicted this assumption and detailed how she took into account particular LNA services in computing particular ADL requests. See also Fair Hearing No. A-07/08-310 (explicit testimony by case manager detailing how other services were factored into making the specific requests in the ILA).

Here, the testimony does not delineate how the petitioner's case manager factored in the home health services in prior years.³ In addition, petitioner's case is compounded by how the petitioner was using the CFC services allotted to her.

Petitioner's CFC plan calls for two-person assistance for many of her ADLs. DAIL approved petitioner's plan with

³ Petitioner argues that they included the home health agency PCA hours to their 2009-2010 service request. However, the numbers do not square. From the 2008-2009 service year to the 2009-2010 service year, the petitioner's case manager reduced the times requested for dressing, medication management and IADLs by 320 minutes/week. This means the 2009-2010 service request added more than the home health PCA hours to come to the request for 148 hours/two weeks.

this understanding. However, DAIL believed that the petitioner was not using the CFC funds as set out in the award. This belief led DAIL to find that certain hours should be paid to the home health agency for the 2008-2009 service year. Petitioner's testimony does not contradict DAIL's assumptions. In fact, petitioner's testimony buttresses DAIL's assumptions.

The evidence adduced at hearing does not support the petitioner's contention that DAIL's actions were a reduction in services. However, the testimony points to communication problems between the various people involved in petitioner's case; it is hoped that all will use the coming service year to look at petitioner's case freshly, comprehensively and collaboratively.

Based on the above, DAIL's decision is affirmed. 3
V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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